IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL STAMP NO. 12821 OF 2006

Shri Rajan Dattatraya Shinde ..Appellant
Vs.
Shri Chetan Vijaykumar Rupareliya ..Respondent

Ms. S. Shailendra with Mr. P.S. Dani for appellant.
Mr. Uday Warunjikar for respondent.

CORAM: B.H. MARLAPALLE, J.

Date : April 30, 2007.

P.C.:

1. Heard the learned counsel for the respective parties.

2. This second appeal arises from the decree dated 9/11/2001 passed by the learned Civil Judge, J.D., Pen in RCS No. 80 of 1999 and duly confirmed by the learned District Judge at Raigad-Alibag vide his judgment and order dated 1/7/2005 in Civil Appeal No. 243 of 2001. The suit was filed for recovery of an amount of Rs.30,000/- lent to the defendant by way of personal loan and with interest. Both the courts below have concurrently recorded a finding that the defendant had borrowed an amount of Rs.2,00,000/- from the plaintiff and an amount of Rs.1,70,000/- was repaid by cheque. It was the defence of the defendant

that the balance of Rs.30,000/- was repaid in cash. However, there was no evidence in support of the said statement, except the statement as such. The trial court, therefore, held that the defendant had failed to prove that he had paid an amount of Rs.30,000/- in cash on 16/5/1999 at 4 p.m. to the plaintiff. This finding has been accepted by the Lower Appellate Court. There is no case made out to hold that these findings suffer from any errors apparent on the face of the record or any illegality or perversity involving any substantial question of law for the consideration of this court.

3. However, the learned counsel for the defendant raised a grievance regarding the interest rate directed to be paid by the trial court and confirmed by the Lower Appellate Court. The defendant has been directed to pay interest at the rate of 18% p.a. from the date of filing of the suit till the realisation of the whole amount. It is stated that the amount of Rs.30,000/- has been deposited with the trial court on 31/7/2003. On instructions from the defendant who is present before the court, the learned counsel for the defendant now states that he is willing to pay

interest at the rate of 10% p.a. and this offer seems to be reasonable.

4. Hence, with the consent of the parties, the decree passed in RCS No. 80 of 1999 is hereby modified as under:-

> "The defendant do pay to plaintiff Rs.30,000/- alongwith 10% interest from the date of filing of the suit till the realisation of the whole amount."

. The interest amount shall be deposited with the trial court within a period of four weeks from today and the plaintiff is at liberty to withdraw the deposited amount with interest.

5. The second appeal stands disposed off accordingly.

(B.H. Marlapalle,J.)